

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E': NEW DELHI**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
and
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER**

ITA No.3940/DEL/2023

DCIT, Central Circle 8,
New Delhi.

vs. University of Petroleum and Energy Studies,
210, 2nd Floor, Okhla Industrial Estate,
Phase III,
New Delhi – 110 020.

(PAN : AAAJU0111A)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Rohit Jain, Advocate

Ms. Somya Jain, CA

REVENUE BY : Ms. Baljeet Kaur, CIT DR

Date of Hearing : 23.01.2025

Date of Order : 23.01.2025

ORDER

PER S.RIFAUR RAHMAN,AM:

1. This appeal has been filed by the assessee against the order of Id. Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre [for short 'Id. CIT (A)] dated 31.10.2023.
2. Brief facts of the case are, assessee filed its return of income on 28.09.2015 declaring nil income. The case was selected for scrutiny. Notices under section 143(2) and 142(1) of the Income-tax Act, 1961 (for short 'the Act') were issued and served on the assessee along with

questionnaire. The Id. AR of the assessee attended and submitted relevant information as called for.

3. The assessee is a Trust u/s 12A of the Act. It is also society notified u/s 80G of the Act and also notified u/s 10(23)(c)(vi)/2010. The main aims and objectives of the Trust are as under :-

- (a) To promote education & research in the field of petroleum energy.
- (b) The objects of the University along with the details of the Hydrocarbons Education and Research Society (HERS).
- (c) To provide industry interactions for students (monitoring of industrial tours and arranging/managing industry seminars and conferences etc.).
- (d) To provide placement platform for its students which includes summer training, industrial training and permanent placements.
- (e) To finalize various Joint Ventures and Memorandum of Understanding on research and development collaboration.
- (f) To explore various opportunities to attract students from all over India.

4. During assessment proceedings, assessee was asked to submit the payments made to Hydrocarbon Education and Research Society (HERS) and file justification why exemption may not be withdrawn. In response, assessee has submitted that the assessee is a University established in the year 2003 by an Act of State Legislature in Uttarakhand with Hydrocarbon Education and Research Society (,HERS'), as its sponsoring

body. The assessee is authorized by University Grant Commission ('UGC') under section 2(t) to award degrees in higher education. The assessee University is duly registered under section 12AA/ 12AB and section 80G of the Income Tax Act, 1961 ('the Act'). The sponsoring body of the assessee i.e., HERS is also a charitable society established in the year 2002 with the predominant charitable object of "education" and is duly notified/ registered under section 12AA and section 80G of the Act. In furtherance of its charitable object of imparting education, the assessee University required courseware, i.e., specialized learning material in the form of textbooks, reference books, sample assignments etc. to facilitate student learning and performance. HERS, it is submitted, has historically been rendering courseware development services which include selection, evaluation, editing and periodic updation of content in the field of Petroleum and Energy Sector. This function is undertaken by content generators and processors (i.e., subject- matter experts) engaged by HERS. For development of content, HERS hired renowned professionals in Petroleum Industry to create a unique curriculum. Having regard to the aforesaid expertise of HERS, the assessee requested HERS for providing support in development of the courseware and provide other Industry related services like placement, training. In lieu of the aforesaid request, the assessee entered into - (1) Royalty Agreement

dated 01.01.2006 with HERS, w.e.f. 15.09.2003, initially for a period of ten years upto 14.09.2013 (and renewed from time to time); and (2) Courseware Development Agreement dated 15.12.2009, w.e.f. 01.04.2009, initially valid for a period of five years (extended from time to time). In terms of the aforesaid agreements, HERS agreed not to provide the said courseware and/ or its use, to any other institution in India, in order to maintain the uniqueness of the courses offered by assessee. Since courseware was one of the sources of generating revenue for HERS to pursue its charitable objects of imparting education, it was decided that the assessee shall pay fees to HERS as percentage of net course fee. With passage of time, the assessee had itself acquired expertise and knowledge for developing its own courseware and therefore, the assessee's dependence on HERS had reduced with time. The assessee, vide Board Resolution dated 03.12.2014, terminated the Courseware Development Agreement dated 15.12.2009 and substantially reduced the rate of royalty for the use of the courseware from 10% to 7% w.e.f 01.01.2015. In line with the growth of assessee, the total fees was reduced from 25% in 2003 as under:

- a) Royalty was paid consistently @10% from 2003, subsequently reduced to 7% w.e.f. 1.1.2015 and was further reduced to 1 %;
- b) Fees for courseware development was paid @ 4% from 2003 upto 31.12.2014 and was discontinued w.e.f 1.1.2015;

- c) Placement services were paid @ 5% from 2003 to 2010 and were discontinued thereafter;
- d) Fees for other Industry services were paid @ 6% from 2003 to 2006 and were discontinued thereafter.

Pursuance to the aforesaid agreements, the assessee had, during the year under consideration, paid royalty and courseware fee aggregating to Rs.17,78,75,332.

5. After considering the above submissions, the Assessing Officer rejected the submissions of the assessee and proceeded to deny the entire exemption claimed u/s 11/12 alleging that the abovesaid royalty payments are in violation of provisions of section 13(1) read with section 13(3) on the following grounds :-

- (i) The study material supplied by HERS to the assessee is more than 7 to 8 years old, in respect whereof application for Intellectual Property Rights (IPR) was made in the year 2011 ;
- (ii) Details of IPR registered in the name of HERS were not provided by the assessee, which shows that there is no underlying property with HERS to whom royalty was paid by the assessee;
- (iii) Payment of royalty was arbitrary, and rates of royalty was decided without any basis;
- (iv) HERS neither had any IPR nor any infrastructure to provide the services to the assessee and hence the payment of royalty and courseware development fees was arbitrary and without any basis.

6. Aggrieved assessee preferred an appeal before the ld. CIT (A) and ld. CIT(A) considered the facts on record and allowed the exemption claimed u/s 11/12 with the observation that royalty payment made to HERS was neither unreasonable nor excessive to attract the provisions of section 13 of the Act.

7. Aggrieved, Revenue is in appeal before us raising following grounds of appeal :-
grounds

“1. The Ld. CIT(A) has erred in not confirming the denial of exemption u/s 11 and 12 of the Income Tax Act, 1961.

2. The Ld. CIT(A) has erred in not appreciating the facts that the transactions with Hydrocarbon Education and Research society (HERS) has not been reported in form 10B as payments made to specified person as per section 13(3) of the I.T. Act.

3. The Ld. CIT(A) has erred in not exploring the reasonableness of royalty and courseware development fees, as the assessing officers has clearly established that such content is 8-9 year old and that the assessee has not submitted any reply to establish that claim of such expenses year after year is reasonable.”

8. At the time of hearing, ld. DR of the Revenue vehemently argued that assessee has violated the provisions of section 13(1) and 13(3) of the Act by making excessive payment in the form of royalty and she brought to our notice findings of the Assessing Officer. She submitted that the order of ld. CIT (A) is not justified.

9. On the other hand, ld. AR of the assessee objected to the submissions of the ld. DR and submitted as under :-

Re (a): Payment of royalty and courseware development fee accepted in preceeding and succeeding years

15. As stated supra, the assessee has been making payment of royalty to HERS in respect of the courseware material developed by the latter since its inception in assessment year 2003. Pertinently, as the assessee, over the years, itself developed expertise in the field, the rate of royalty was subsequently reduced.
16. Most importantly, the payment of royalty made by the assessee (*as per rates tabulated infra*) have been duly assessed and accepted by the assessing officer in the assessment for assessment years 2005-06 to 2012-13 and 2014-15 (refer assessment orders placed at **pages 153-220 of PB**).

Assessment Year	Rate of Royalty	Relevant Agreement	Assessment Status	Page No of PB
September 2003 till March 2004	10%	Royalty Agreement dated 01.01.2006 @ page 51-55 of PB	Return for AY 2003-04 not selected for scrutiny.	--
2004-05	10%		Return for AY 2004-05 not selected for scrutiny.	--
2005-06	10%		Accepted in 143(3) assessment - refer order dated 22.11.2007	153-154
2006-07	10%		Accepted in 143(3) assessment - refer order dated 22.09.2008	155-157
2007-08	10%		Accepted in 143(3) assessment - refer order dated 15.05.2009	158-160
2008-09	10%		Accepted in 143(3) assessment - refer order dated 15.11.2010	161-163
2009-10	10%		Accepted in 143(3) assessment - refer order dated 14.10.2011	164-169
2010-11	10%		Accepted in 143(3) assessment - refer order dated 19.02.2013	170-175
2011-12	10%		Accepted in 143(3) assessment - refer order dated 16.01.2014	176-178
2012-13	10%		Accepted in 143(3) assessment - refer order dated 16.01.2014	179-182
April 2013 till September 2013	10%		Return for AY 2013-14 not selected for scrutiny Accepted in 147 assessment	

Assessment Year	Rate of Royalty	Relevant Agreement	Assessment Status	Page No of PB
			Accepted in 147 assessment (Post Survey) for AY 2019-20 – refer order dated 31.05.2023	
			<u>AY 2020-21</u> Accepted in 143(3) assessment (Post Survey) for AY 2020-21 – refer order dated 29.03.2022	209-213
				214-220

17. Pertinently, the case of the assessee for assessment year 2013-14 to 2014-15 was reopened under section 147 of the Act and the issue of, inter-alia, payment of royalty to HERS was re-examined. After considering all the details and documents, the assessing officer was pleased to reassess the income of the assessee at the income determined under section 143(3) of the Act and no adjustment on account of royalty paid to HERS was made. Moreover, in the subsequent years till assessment year 2020-21, no addition in respect of the royalty payments has been made by the assessing officer.
18. In this regard, it is submitted that once the payment of royalty at the rate of 10% to the same party is accepted to be reasonable, the payment made during the year under consideration at a reduced rate of 7% could not have been disputed to be unreasonable [refer *Radhasoami Satsang vs. CIT: 193 ITR 321 (SC)*; *CIT vs. Excel Industries Ltd: 358 ITR 295 (SC)*; *DIT (E) vs. Guru Nanak Vidya Bhandar Trust: 272 ITR 379 (Del)*].
19. In view of the aforesaid, the exemption under section 11/12 of the Act could not have been, it is respectfully submitted, denied to the assessee even on the ground of principles of consistency.

Re (b): Payment of royalty accepted as application of income in the hands of HERS

20. Most importantly, the royalty and courseware fees received from the assessee was duly applied by HERS towards charitable purpose of education and such application of income has been accepted in the completed assessment for the year under consideration vide order dated 13.12.2017 passed under section 143(3) of the Act (refer pages 221-224 of PB).

Re (c): Payment of royalty was, in any case, reasonable and not at all excessive

21. Without prejudice to the aforesaid, it is submitted that the assessing officer failed to appreciate that since payment of royalty and course fee aggregating to Rs 17,78,75,332 made to HERS was reasonable (and not excessive, as alleged), there was no violation of provisions of section 13(1) of the Act.

22. Reliance is placed on various decisions wherein it has been held that so long as payment made in the form of remuneration/ salary/ allowance, etc., to parties covered under section 13(3) are for the services rendered and are reasonable, there is no benefit so as to hold violation of section 13(1)(c) of the Act. It has further been held the onus is on the Revenue to prove that the payment made to the persons specified in section 13(3) of the Act is unreasonable by placing on record the material to show the market value, the services rendered and how the payment made is excessive and unreasonable:-

- CIT(E) v. Bholaram Education Society: 100 taxmann.com 508 – Revenue’s SLP dismissed by Supreme Court in CIT(E) v. Bholaram Education Society: 260 Taxman 368 (SC)
- **Pariwar Sena Sansthan: 254 ITR 268 (Del)**
- CIT v. Sri Balaji Society: 260 Taxman 246 (Bom)
- ITO v. Virendra Singh Memorial Shiksha Samiti: 18 DTR 502 (Luck Trib.)
- Dr. D.Y. Patil Pratisthan: 61 SOT 48 (Pune Trib.)
- ITO v. Human Resource Development and Management Trust: 47 SOT 85 (Kol Trib.)

23. In the present case, payment was made by the assessee to HERS for use of the unique courseware, etc. It is submitted that HERS is responsible for content generation and processing. Its activities include selection, evaluation, editing and periodic updation of content. This function is undertaken by content generators and processors (i.e., subject-matter experts) engaged by HERS. They are responsible for sourcing content and writing it in a clear, coherent and comprehensive form.

- Development of courseware

The content developed by HERS is then reviewed by UPES and accordingly incorporated in its courses. The content is also reviewed by representatives of the industry and eminent persons in academics.

- Maintenance and protection of courseware

HERS is responsible for maintaining the courseware on a regular basis to ensure that the content is contemporary and updated in-line with course concept for respective courses and industry practices.

While developing the content, HERS works in close coordination with UPES to assess the requirements of courseware development and provide the required courseware/ updation in a timely manner.

24. On perusal of the aforesaid, it will kindly be appreciated that the courseware provided by HERS was not just any ordinary/ regular course material but a specialized learning material, which alongwith continuous support provided by HERS over a period of time, has enabled the assessee on a fast growth path and help achieve major milestones.

25. **Furthermore, it is respectfully submitted that the assessee had also paid 20% of relevant net course fees for computer science engineering programs to IBM during the same year, i.e., AY. 2015-16 for specialized courseware, etc. (Copy of agreement entered into with IBM India Pvt. Ltd is placed at pages 142-152 of the paper book).**

26. To further corroborate and establish the arm's length nature of the transaction entered into between the assessee and HERS, the assessee has placed on record, by way of additional evidence, **copy of the Benchmarking Study** undertaken by Ernst and Young ("E&Y") to review the appropriateness of the pricing arrangement entered into between the two parties (refer **pages 78-130 of PB**). In the benchmark study, after detailed analysis of external comparable uncontrolled transactions, it has been concluded that payments made by UPES to HERS towards courseware and content development during the years 2014-15 to 2017-18 can be considered at arm's length.
27. Most importantly, the assessing officer, in the remand report, has not rendered any substantial findings on the TP study and payment made to IBM (refer **pages 293-297 of PB**).
28. It is further respectfully submitted that the assessing officer has mechanically held that the payment made by the assessee was unreasonable, without specifying as to what percentage of royalty would have constituted as reasonable payment. In this regard, it is settled law that the assessing officer ought to have determine/ specify the reasonable percentage of royalty which should have been paid by the assessee and then disallow only the excess payment made.
29. In this regard, it is a trite law that the **onus is on the Revenue** to prove that the payment made to the persons specified in section 13(3) of the Act is unreasonable by placing on record the material to show the market value, the services rendered and how the payment made is excessive and unreasonable:
- CIT vs. CMR Jnanadhra Trust: 230 Taxman 238 (Kar.)
 - ITO vs. Virendra Singh Memorial Shiksha Samiti: (2009) 18 DTR (Luck) 502
 - Dr. D.Y. Patil Pratisthan: (2014) 61 SOT 48 (Pune) (refer paras 35 – 37)
 - ITO vs. Noble Medical Foundation and Research Centre: 68 SOT 343 (Pune Trib.)
 - ITO vs. Human Resource Development and Management Trust: (2011) 47 SOT 85 (Cuttack)
 - DCIT vs. Gideons International in India: 156 ITD 666 (Hyd Trib.)
30. In view of the aforesaid, the action of the assessing officer in mechanically holding the entire payment to be unreasonable without specifying what would constitute as reasonable payment.
31. At this juncture, it is of utmost importance to mention that while computing the income of the assessee as a business entity in terms of section 164, the assessing officer has allowed the complete payment of royalty as deductible revenue expenditure, thereby accepting the same to be reasonable. In that view of the matter, when the aggregate payment of royalty stands allowed as revenue expenditure, the same cannot be treated as unreasonable merely because the payment has been made to its own sponsoring body alleged to be covered under section 13 of the Act.
- Re (d): Payment by the assessee to HERS - another charitable institution was, even if regarded as excessive, alternatively in the nature of donation to a charitable institution, which is regarded as application of income for charitable purposes and not covered by section 13(1) of the Act**
32. Strictly without prejudice to the aforesaid, even if the royalty payment was regarded as excessive, the same could, at best, be considered as a donation being made by once charitable entity to another.

Further, since the payment by the assessee to HERS stood accepted as application of income in the hands of HERS, no disallowance could have been made in the hands of the assessee.

33. In this regard, it is a trite law that donation by the one trust to another would denote application of income within the meaning of section 11(1)(a) of the Act:
- CIT vs. Thanthi Trust: 239 ITR 502 (SC)
 - DIT (E) vs. Bagri Foundation: 344 ITR 193 (Del)
 - CIT vs. Indian National Theatre Trust: 305 ITR 149 (Del.)
 - CIT vs. Shri Ram Memorial Foundation : 269 ITR 35 (Del.)
 - CIT vs. Matriseva Trust: 242 ITR 20 (Mad.)
 - CIT vs. Nirmala Bakubhai Foundation: 226 ITR 394 (Guj.)
 - CIT vs. Hindustan Charity Trust: 139 ITR 913 (Cal.)

Re (e): HERS being a charitable institution, could not have been regarded as person covered under section 13(3) of the Act – therefore, no question of violation under section 13

34. Various clauses (a) to (e) of section 13(3) of the Act fundamentally covers non-charitable entities who are capable of deriving any benefit from a charitable trust/ institution. This is evident from the fact that clause (d) covers relatives of any trust, author, etc., which would obviously only apply to human beings, being non charitable entities.
35. It is respectfully submitted that if charitable trust/ institutions were to be regarded as a specified person as defined in section 13(3), the law would not have permitted giving of donation by one charitable institution to another charitable institution, since such donation would have also found foul of section 13(1) of the Act.
36. **Emphatic reliance in this regard is also placed on the decision of the Jaipur bench of the Tribunal in the case of ACIT v. Mahima Shiksha Samiti: 185 TTJ 425, affirmed by Hon'ble Rajasthan High Court in the case of CIT v. Mahima Shiksha Samiti: 414 ITR 673 wherein it has been held that sponsoring body of a charitable institution does not fall in any of the clauses of section 13(3) and therefore, it is not a specified person.** The said decision is squarely applicable to the facts of the present case.
37. **In view of the aforesaid, since HERS, it is submitted, merely acted as a sponsoring body in terms of the legislative enactment for setting up the appellant as a University, HERS is not covered under the provisions of the aforesaid section 13(3) of the Act.**

Re (f): Even if the payment is treated to be in violation of section 13, complete exemption under section 11/12 of the Act cannot be denied

38. **Strictly without prejudice** to the aforesaid that the payments made by the assessee to HERS are reasonable and hence, do not fall within the purview of Sec 13(1)(c) rws 13(3), it is respectfully submitted that there was no warrant to completely deny exemption under sections 11/12 of the Act.

39. Kind attention is invited to various judgments/ decisions wherein it has been held that instances of violation of any provision of section 13 could not result in complete denial of exemption under sections 11/12 of the Act:

- **CIT vs. FR. Mullers Charitable institution: 363 ITR 230 (Kar) – SLP filed by revenue dismissed by Supreme Court in 227 Taxman 369**
- CIT vs. Working Women’s Forum: 365 ITR 353 (Mad) – SLP preferred by the revenue dismissed by Supreme Court in 235 Taxman 516
- DIT(E) vs. Sheth Mafatlal Gagalbhai Foundation Trust: 249 ITR 533 (Bom)
- CIT vs. S.P. Mehta Memorial Trust: ITA No. 187 of 2005 (Guj)
- CIT vs. Orpat Charitable Trust: 230 Taxman 66 (Guj)
- CIT(E) vs. Santokba Durlabhji Trust Fund: 406 ITR 457
- Patanjali Yogpeeth (Nyas) vs. ADIT(E): 163 ITD 323 (Del Trib.) – affirmed by Delhi High Court in the case of CIT(E) vs. Patanjali Yogpeeth (Nyas): 402 ITR 164
- **Span Foundation vs. ITO: 2008 TIOL 108-ITAT-Del (Del Trib.) – revenue’s appeal dismissed in DIT vs. Span Foundation: 178 Taxman 436 (Del).**
- Puran Chand Dharmarth Trust vs. ITO: [2018] 170 ITD 687 (Del Trib.)
- **IILM Foundation vs. Addl.CIT: ITA 1142/Del/2011 (Del Trib.)**
- DCIT vs. Help Age India: 133 TTJ 590 (Del Trib.)
- ACIT vs. Idicula Trust Society: 52 SOT 1 (Del Trib.) - **affirmed in CIT vs. Idicula Trust Society: 223 Taxman 66 (P&H)**
- **ITO vs. Swami Omkarnanda Saraswati Charitable Trust: 86 taxmann.com 37 (Del Trib.)**
- **Puran Chand Dharmarth Trust vs. ITO: 194 TTJ 643 (Del Trib.)**
- Jamsetji Tata Trust vs. JDIT (Exemption) ITAT : 161 TTJ 742 (Mum Trib.)
- Gurdayal Berlia Charitable Trust vs. ITO: 34 ITD 489 (Mum Trib.)
- Manockjee Cowasjee Petit Charities vs. DIT(E): 148 TTJ 181 (Mum Trib.)(TM)
- **Audyogik Shikshan Mandal vs. ITO: 156 ITD 1 (Pune Trib.) – affirmed in CIT vs. Audyogik Shikshan Mandal: 261 Taxman 12 (Bom.)**

40. Most importantly, vide Finance Act 2022, the provisions of section 13(1) have been amended to provide that exemption under section 11/12 of the Act only to the extent of income, directly or indirectly, applied for the benefit of a specified person.

41. In that view of the matter, complete exemption could, in any case, not have been denied.

10. Considered the rival submissions and material placed on record. We observed that HERS is a society and a charitable institution in the field of education specifically in the environment, infrastructure and energy management in the areas of petroleum, electric power and non-conventional energy sources. The assessee entered into an agreement

with HERS in the AY 2003-04. The courseware material was widely used by the assessee since then and after considering the development over the years and its adoptability by the assessee, the assessee has renegotiated the terms and revised the royalty rates in the current assessment years from 10% to 7% effective from 01.01.2015. The terms were negotiated from the date the course was utilized by the assessee and the revenue has accepted the above payments and only during the renegotiation of the above terms, the AO raises the flag and relooks at the terms afresh. It was further brought to our attention that the Revenue has accepted the renegotiated terms in the subsequent years. The review of the terms during the current assessment years without considering the factual matrix in this case is uncalled for. Therefore, the terms of agreement and payment of royalty do not attract the provisions of section 13(3) of the Act.

11. Further it was brought to our attention that the assessee also brought on record the comparative analysis on the payment of royalty payments to demonstrate that the payments are fair market price. After considering the assessment order, the AO has not brought on record how the provisions of section 13(2) and 13(3) are attracted and how the benefit was derived by the specified/main trustees of the assessee trust in this transaction. The AO merely observed his views on the reasonableness of the royalty

payments and method of execution of agreement. The main ground raised by the Revenue is on the payments made to HERS without reporting the transactions in the form 10B as the payment was made to specified person. The AO failed to bring on record, how the payments made are relating to specified persons. There are no findings by the AO on the aspect of payments made to specified persons. Therefore, after considering the factual matrix on record, we are inclined to accept the detailed findings of Ld CIT(A). In the result, we dismiss the grounds raised by the Revenue.

12. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on this 23RD day of January, 2025 after the conclusion of hearing.

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

sd/-
(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Dated: 23.01.2025
TS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI